

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARIO LAMONT MINOR,

Defendant-Appellant.

UNPUBLISHED

February 8, 2007

No. 267012

Kent Circuit Court

LC No. 04-008670-FH

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to rob while armed, MCL 750.89, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as an habitual offender, third offense, MCL 769.11, to concurrent prison terms of 17 to 40 years for the assault conviction and five to ten years for the felon-in-possession conviction, and to a consecutive two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's sole claim on appeal is that trial counsel was ineffective for failing to move to suppress incriminating statements defendant made to the police. Because defendant failed to raise this claim below in a motion for a new trial or an evidentiary hearing, review is limited to mistakes apparent from the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

To prevail on a claim of ineffective assistance of counsel, defendant must show that his counsel's performance was objectively unreasonable and the representation was so prejudicial that he was deprived of a fair trial. To demonstrate prejudice, the defendant must show that, but for counsel's error, there was a reasonable probability that the result of the proceedings would have been different. This Court presumes that counsel's conduct fell within a wide range of reasonable professional assistance, and the defendant bears a heavy burden to overcome this presumption. [*People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001) (citations omitted).]

"A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). If a defendant is

advised of and invokes his right to counsel, he is not subject to any interrogation initiated by the police in the absence of counsel. *People v Kowalski*, 230 Mich App 464, 478; 584 NW2d 613 (1998). Interrogation refers to express questioning or its functional equivalent, i.e., “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.* at 479 (internal quotation marks and citation omitted).

The record indicates that defendant, who was being treated at a hospital for a gunshot wound, exercised his right to remain silent and declined to make a statement. He remained in the hospital for a few days under guard. Two of the guards, Satterthwaite and Johnson, testified that defendant spontaneously made inculpatory statements without questioning, although Satterthwaite admitted that he challenged defendant’s statements by contradicting him and once accused him of lying. Defendant has not explained how Satterthwaite’s expressions of disbelief constituted interrogation or its functional equivalent. Because defendant “may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims,” *Green Oak Twp v Munzel*, 255 Mich App 235, 244; 661 NW2d 243 (2003), his “failure to properly address the merits of his assertion of error constitutes abandonment of the issue.” *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). In any event, any statements defendant made to Satterthwaite were cumulative of those made to Johnson, who never said anything to defendant that might elicit a confession. Rather, defendant asked to speak to a detective following an upsetting telephone conversation, went on to explain why he wanted to speak to a detective, and incriminated himself in doing so. Because there is no basis in the record for concluding that defendant’s statements to Johnson resulted from any interrogation initiated by the police, defense counsel was not ineffective for failing to challenge those statements, and defendant has failed to show that he was prejudiced by any error in the admission of his statements to Satterthwaite.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio